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Atorneys for Plaintiff A.V.E.L.A. Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

13 A.V.E.L.A., Inc., a Nevada corporation,

Case No.: 2:10-cv-02013 PMP-RJJ

Plaintiff,

VS

MOTION TO WITHDRAW

16 THE LYON COMPANY, a business entity
17 organized under the laws of Utah,
and DOES I through X, inclusive.

Defendants.

20 Attorney Lon A. Burke, Esq. of the law firm of LAXALT & NOMURA, LTD., moves
21 this Honorable Court for an order allowing it to withdraw as attorneys for Plaintiff
22 A V E L A, Inc.

This Motion is based upon the pleadings and papers on file with this Court, the

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LAXALT & NOMURA, LTD
ATTORNEYS AT LAW
6720 VIA ALTA PARKWAY
Suite 430
LAS VEGAS, NEVADA 89119

1 attached Memorandum of Points and Authorities, and the attached Affidavit in Support
2 of this Motion.

3 DATED this 23 day of January, 2012.

4 LAXALT & NOMURA, LTD.



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13 Attorneys for Plaintiff A.V.E.L.A. Inc.

MEMORANDUM OF POINTS AND AUTHORITIES

14 This is an action brought by Plaintiff A.V.E.L.A. Inc. against Defendant The Lyon
15 Company. A.V.E.L.A. is seeking damages from Defendant The Lyon Company for
16 Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing,
17 and Unjust Enrichment.

18 Plaintiff A.V.E.L.A. filed its Complaint on November 17, 2010 with this Court.
19 Defendant The Lyon Company has not made an appearance in this action. A.V.E.L.A.
20 served and filed its Notice of Intent to Take Default on July 11, 2011, and filed its
21 Application for Entry of Default on August 1, 2011. The Clerk entered a Default on
22 August 2, 2011. There has been no scheduling order issued, and there is no trial
23 setting.

24 Laxalt & Nomura, Ltd. has represented Plaintiff A.V.E.L.A. in this lawsuit, and has
25 incurred unpaid legal expenses and costs. Laxalt & Nomura, Ltd. has exercised
26 reasonable efforts to seek payment of the unpaid expenses and costs, but has been
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1 unsuccessful. Laxalt & Nomura, Ltd. further believes that any additional legal work
 2 performed or costs expended by moving attorneys will not be paid in full in a reasonable
 3 and timely manner.

4 Laxalt & Nomura, Ltd.'s continued representation of Plaintiff A.V.E.L.A. will result
 5 in an unreasonable financial burden due to A.V.E.L.A.'s failure to fulfill its obligation to
 6 timely pay for services rendered. Laxalt & Nomura, Ltd. has provided reasonable
 7 warning of withdrawal if A.V.E.L.A. failed to fulfill its financial obligations. NRPC
 8 1.17(b)(5) and (6).

9 The applicable law regarding withdrawals is as follows:

10 **LOCAL RULE 10 – 6: Appearances, Substitutions and Withdrawals.**

11 ... (b) *No attorney may withdraw after appearing in a case except by leave of court after notice served on the affected client and opposing counsel. ...*

12 ... (d) *Discharge, withdrawal or substitution of an attorney shall not alone be reason for delay of pretrial proceedings, discovery, the trial, or any hearing in the case.*

13 ... (e) *Except for good cause shown, no withdrawal or substitution shall be approved if delay of discovery, the trial or any hearing in the case would result. Where delay would result, the papers seeking leave of court for the withdrawal or substitution must request specific relief from the scheduled trial or hearing. If a trial setting has been made, an additional copy of the moving papers shall be provided to the clerk for immediate delivery to the assigned district judge, bankruptcy judge or magistrate judge.*

14 Furthermore, pursuant to Supreme Court Rule 46, an attorney may withdraw
 15 "[u]pon the order of the court or judge thereof on the application of the attorney or
 16 client." SCR 46(2).

17 This Motion should be granted and allow Laxalt & Nomura, Ltd. to withdraw as
 18 counsel because the withdrawal can be accomplished without material adverse effect
 19 on the interests of the clients. NRPC 1.16(b)(1). Granting this Motion will not result in
 20 any delay of the trial or of the hearing of any other matter in this case. LR 10-6(e).

1 The Motion and supporting Memorandum of Points and Authorities and affidavit
2 have been served on A.V.E.L.A. and all parties.

3 WHEREFORE, it is respectfully requested that this Motion be granted, allowing
4 the law firm of Laxalt & Nomura, Ltd. to withdraw as attorneys of record for Plaintiff
5 A.V.E.L.A. Inc.

6 DATED this 23rd day of January, 2012.
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8 LAXALT & NOMURA, LTD.

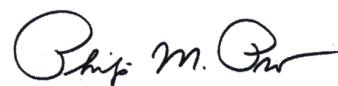


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19 *Attorneys for Plaintiff A.V.E.L.A. Inc.*

20 IT IS SO ORDERED.
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22 Plaintiff A.V.E.L.A. Inc. shall have until 2/23/2012 within which to designate in
23 writing new counsel of record.



24 PHILIP M. PRO
25 UNITED STATES DISTRICT JUDGE
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28 Dated: January 24, 2012.

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of LAXALT & NOMURA, LTD., and that I caused a true and correct copy of the foregoing document to be served by electronic transmission using the CM/ECF system for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant: and/or to the following recipients deposited in the United States Mail, postage prepaid, first class delivery:

8 Leo Valencia, President
9 A.V.E.L.A., Inc.
10 132 N. El Camino Real, Ste. 363
Encinitas, CA 92024

11 James R. Farmer, Esq.
12 36 South State Street, Ste. 1900
13 Salt Lake City, UT 84111
Registered Agent for THE LYON COMPANY

14 DATED this 15th day of January, 2012.

Marcia B. Ryan
An Employee of Laxalt & Nomura, Ltd.

AFFIDAVIT OF COUNSEL, LON A. BURKE, ESQ.

STATE OF NEVADA)
)
COUNTY OF CLARK)

LON A. BURKE, ESQ., being first duly sworn, on oath, deposes and says:

1. I am an attorney with the law firm of LAXALT & NOMURA, LTD.
2. I am licensed to practice law in all Courts within the State of Nevada.
3. I have personal knowledge of the facts referred to in this Affidavit and could competently testify to these facts if called upon to do so in a court of law.
4. I make this Affidavit in support of Laxalt & Nomura's Motion to Withdraw as Counsel of Record for Plaintiff A.V.E.L.A.
5. Laxalt & Nomura represents A.V.E.L.A. Inc. in this lawsuit currently pending in the United States District Court of Nevada, Case No. 2:10-cv02013 PMP-RJJ.
6. There is currently no trial setting in this case.
7. Laxalt & Nomura, Ltd. has represented Plaintiff A.V.E.L.A. in this lawsuit, and has incurred unpaid legal expenses and costs.
8. Laxalt & Nomura, Ltd. has exercised reasonable efforts to seek payment of the unpaid expenses and costs, but has been unsuccessful.
9. Laxalt & Nomura, Ltd. further believes that any additional legal work performed or costs expended by moving attorneys will not be paid in full in a reasonable and timely manner.

- 1 10. Laxalt & Nomura, Ltd.'s continued representation of Plaintiff A.V.E.L.A. will
- 2 result in an unreasonable financial burden due to A.V.E.L.A.'s failure to
- 3 fulfill its obligation to timely pay for services rendered.
- 4 11. Laxalt & Nomura, Ltd. has provided reasonable warning of withdrawal to
- 5 A.V.E.L.A. if it failed to fulfill its financial obligations.
- 6 12. A.V.E.L.A. may be served through Leo Valencia, President., A.V.E.L.A.,
- 7 Inc. 132 N. El Camino Real, Ste. 363, Encinitas, CA 92024.
- 8 13. A.V.E.L.A.'s telephone number is (877) 787-4855.
- 9 14. Proper notice of the Motion has been given to all parties.

11 Further, your Affiant sayeth naught.



12 13 14 LON A. BURKE, ESQ.

15 16 17 18 SUBSCRIBED and SWORN to before me

19 this 23rd day of January, 2012.

20 Nancy E. Rozan
21 Notary Public

